**SIVANESAN ACHALINGAM v. PATHMANATHAN KUPPUSAMY; MAJLIS PEGUAM (INTERVENER)**

COURT OF APPEAL, PUTRAJAYA
YAACOB MD SAM JCA
RAVINTHRAN PARAMAGURU JCA
HASHIM HAMZAH JCA
[CIVIL APPEAL NO: W-02(A)-561-03-2021]
1 DECEMBER 2022

**Abstract** – *(i) The proper filing of Forms A and B will determine whether the representative of either party has the locus standi to appear before the court, in this case, the Industrial Court, as that party's representative. A failure to do so would mean that the solicitor is not representing the aggrieved party and is therefore not obligated to inform the latter of the trial dates of the case; (ii) Although it is trite that the standard of proof to establish misconduct is beyond reasonable doubt, a disciplinary proceeding is not subject to the rigid and strict adversarial procedures in criminal trials.*

***LEGAL PROFESSION:*** *Disciplinary proceedings – Complaint against solicitor – Allegation of misconduct and breach of duty – Appeal against Disciplinary Board's decision to impose fine on solicitor – Whether solicitor had locus standi to appear as aggrieved party's representative – Burden of proof – Whether Disciplinary Committee or Disciplinary Board applied wrong burden of proof in disciplinary proceedings – Whether appellate intervention warranted*

This was the appellant's appeal against the decision of the High Court Judge ('HCJ') dismissing the appellant's appeal against the decision of the Advocates and Solicitors Disciplinary Board ('DB') ('said decision'). In the said decision, the DB affirmed the finding and recommendation of the Advocates and Solicitors Disciplinary Committee ('DC') and imposed upon the appellant to pay a fine of RM10,000 only payable to the Discipline Fund within one month from the date of the decision and in default thereof, s. 103(1) of the Legal Profession Act 1976 ('LPA') shall apply. Briefly, the facts were that the respondent, aggrieved by the decision of his employer to dismiss him, filed a representation under s. 20 of the Industrial Relations Act 1967 ('IRA'), which was referred to the Industrial Court. The respondent engaged the services of the Malaysian Trade Union Congress ('MTUC') and one Sivananthan Arumugam ('Sivananthan'), an Industrial Relations Officer, was assigned to represent the respondent. After the case proceeded to trial, Sivananthan informed the court that he would not be able to continue with the case pending the decision from MTUC's General Council. Subsequently,

A the appellant informed the court that he would be taking over the case from Sivananthan and undertook to file Form A (an application for permission to be represented by a legal practitioner) and Form B (a warrant of authority). The case was then adjourned several times. When the matter came up for continued hearing, Sivananthan, the appellant and the respondent were
B absent and the case was struck off. The respondent sued Sivananthan and MTUC for negligence in the Sessions Court and after a full trial, Sivananthan and MTUC were found liable for negligence. The respondent then lodged a complaint against the appellant to the DB. The DC found that the appellant had committed several misconducts such as breach of duty and
C recommended that cause for disciplinary action existed. The DB affirmed the finding and recommendation of the DC, and subsequently the HCJ dismissed the appellant's appeal against the DB's decision. Hence, this appeal. The issues that arose were (i) whether the appellant was representing the respondent when the case was mentioned on 6 April 2010; (ii) whether the appellant was obligated to inform the continued hearing dates to the
D respondent; and (iii) whether the DC or the DB had applied the wrong burden of proof in the disciplinary proceeding.

**Held (allowing appeal)**
**Per Hashim Hamzah JCA delivering the judgment of the court:**

E **(1)** It is the position of the Industrial Court that the proper filing of Forms A and B will determine whether the representative of either party has the *locus standi* to appear before the Industrial Court as that party's representative. Since Forms A and B were never filed in the Industrial Court, the appellant had no *locus standi* to appear as the respondent's
F representative in the first place. Even the respondent admitted that he never appointed the appellant to represent him. According to the appellant, during the case management on 6 April 2010, the appellant and Sivananthan informed the Chairman in chambers that the appellant would not represent the respondent since the respondent did not execute
G Forms A and B. The appellant's version was confirmed by Rajan, who appeared on behalf of the firm representing the respondent's former employer on the day in question. Rajan was able to depict and corroborate the appellant's version of the material part of the incident. There was nothing to suggest that he had given false evidence before the DC or that his testimony was not credible. The DC and DB failed to
H give proper weight to the relevant evidence. This error rendered the DC's recommendation and the DB's decision highly perverse, warranting appellate intervention. (paras 30-37)

**(2)** There was no evidence to show that the respondent appointed the
I appellant to represent him in the Industrial Court, and therefore the appellant had no obligation to inform the trial dates to the respondent.

The HCJ erred both in fact and in law when she found that the appellant was responsible to inform the continued hearing dates to the respondent. (paras 38 & 41)

**(3)** It is trite that the standard of proof to establish misconduct is beyond reasonable doubt. However, the disciplinary proceeding is not subject to the rigid and strict adversarial procedures in criminal trials. The disciplinary proceeding may be conducted in any method or manner deemed appropriate as long as it is not in breach of any specific provisions of the relevant statutes or regulations and does not result in a denial of natural justice to the member concerned. Therefore, this court agreed with the appellant on the two issues raised, except on the issue of burden of proof. (paras 44 & 47)

**Case(s) referred to:**

*Aero Manufacturing Sdn Bhd, Selangor v. Kesatuan Kebangsaan Pekerja-Pekerja Syarikat-Syarikat Pembuat Keluaran Getah [1997] 2 ILR 416* ***(refd)***
*Bar Malaysia v. Mohd Fadli Shuib & Anor [2014] 1 LNS 1934 CA* ***(refd)***
*Bawani Maruthapillai v. Avani Sepang Goldcoast Resort (Golden Palm Tree Resort & Spa Sdn Bhd) [2019] 2 LNS 1739* ***(refd)***
*Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Majlis Peguam (Intervener) [2018] 2 CLJ 1 FC* ***(refd)***
*Gana Muthusamy v. Tetuan LM Ong & Co [1998] 4 CLJ 878 CA* ***(refd)***
*Island & Peninsular Bhd v. Zaidah Tambar [2005] 2 ILR 909* ***(refd)***
*Keith Sellar v. Lee Kwang & Another Appeal [1980] 1 LNS 36 FC* ***(refd)***
*Majlis Peguam v. Cecil Wilbert Mohanaraj Abraham [2019] 5 CLJ 139 FC* ***(refd)***
*Majlis Peguam v. Mohinder Kaur Balbir Singh Deol [2011] 1 LNS 1910 CA* ***(refd)***
*Majlis Peguam Malaysia v. Rajehgopal Velu & Anor [2017] 2 CLJ 493 FC* ***(refd)***
*Ng Peng Soon v. Wing Thung Trading Sdn Bhd [2018] 2 LNS 2125* ***(refd)***
*Sanders Hydroseeding Sdn Bhd v. K Radhakrishnan SK Nair [1996] 2 ILR 1612* ***(refd)***
*Sithradevi Nagalingam v. Masdar Darman & Anor; Majlis Peguam Malaysia (Intervener) [2021] 3 CLJ 677 FC* ***(refd)***

**Legislation referred to:**

Industrial Court Rules 1967, rr. 3, 4
Industrial Relations Act 1967, ss. 20, 27(1)
Legal Profession Act 1976, s. 103(1)

*For the appellant - R Kengadharan, L Nagarajan & S Lavenyia; M/s A Sivanesan & Co*
*For the respondent - In Person*
*For the intervener - Heng Yee Keat; M/s Christopher & Lee Ong*

*[Editor's note: Appeal from High Court, Kuala Lumpur; Originating Summons No: WA-17D-39-12-2019 (overruled).]*

*Reported by Suhainah Wahiduddin*

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## JUDGMENT

**Hashim Hamzah JCA:**

### Introduction

B **[1]** This is the hearing of the appellant's appeal against the decision of the learned High Court Judge ("HCJ"), which was delivered on 22 February 2021, in which the learned HCJ dismissed the appellant's appeal against the decision of the Advocates and Solicitors Disciplinary Board ("DB") dated 16 November 2019 ("the said decision").

C **[2]** In the said decision, the DB affirmed the finding and recommendation of the Advocates and Solicitors Disciplinary Committee ("DC") and imposed upon the appellant to pay a fine of RM10,000 only payable to the discipline fund within one month from the date of the decision and in default thereof, s. 103(1) of the Legal Profession Act 1976 ("LPA 1976") shall apply.

D **[3]** This is our unanimous decision. Having heard the submissions and perusing the appeal records and the grounds of judgment of the learned HCJ in respect of this appeal, we are of the view that there is an appealable error committed by the learned HCJ which warrants appellate intervention for reasons set out below.

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### Brief Facts

**[4]** Pertinent facts leading to the present appeal can be summarised as follows.

F **[5]** On 23 July 2007, the respondent was dismissed by his employer, Jord Malaysia Sdn. Bhd. with effect from 23 July 2007. Aggrieved with his dismissal, the respondent filed a representation under s. 20 of the Industrial Relations Act 1967 ("IRA 1967"). His representation was referred to the Industrial Court. The case was registered as Industrial Court Case No: 3-4-2313-07.

G **[6]** The respondent engaged the services of the Malaysian Trade Union Congress ("MTUC"), and Mr. Sivananthan a/l Arumugam, an Industrial Relations Officer, was assigned to represent the respondent in the case.

**[7]** On 3 June 2008, the respondent's case was fixed for case management. H Mr. Sivananthan was absent from court that day and had also failed to comply with some of the court's pre-trial directions. As a result, the case was struck off. Mr. Sivananthan later applied for the case to be reinstated, and the application was allowed. The respondent's case then proceeded to trial.

**[8]** On 24 February 2010, Mr. Sivananthan appeared for the respondent, I and Mr. Harjeet Singh Sidhu appeared for the respondent's former employer. The matter was heard in chambers, where Mr. Sivananthan requested an

adjournment and informed the court that he would not be able to continue with the case pending the decision from MTUC's General Council. The case was adjourned to 17 March 2010.

**[9]** On 17 March 2010, the appellant informed the court that he would be taking over the case from Mr Sivananthan and undertook to file Form A (an application for permission to be represented by a legal practitioner) and Form B (a warrant of authority). The case was stood down until Mr Harjeet Singh Sidhu was in court at around 10am. When the case was recalled, the appellant informed the court that he had just received a call from Mr. Sivananthan, who said that MTUC would decide on his issue in two weeks. The appellant requested another mention date. The case was adjourned to 30 March 2010.

**[10]** On 30 March 2010, Mr Sivananthan informed the court that the appellant would take over the respondent's case. He requested another mention date for the appellant to file Forms A and B and to fix a continued hearing date. The case was adjourned to 6 April 2010 for mention.

**[11]** On 6 April 2010, during the case management at the Industrial Court, it was recorded that a solicitor named Mr Rajan a/l Ayappan appeared on behalf of Messrs P S Sohanpal & Co, the legal firm that represented the respondent's former employer, and the appellant appeared for the respondent, together with Mr Sivananthan. The learned Chairman stated in the minute:

(M) to fix fresh dates for CH. To 13 & 14/9/10 (CH).

**[12]** When the matter came up for continued hearing on 13 September 2010, Mr. Sivananthan, the appellant and the respondent were absent. The case was struck off. The grounds of the learned Chairman can be seen in Award No: 1185 of 2010. The respondent's attempt to reinstate his case through MTUC failed, as seen in Award No: 416 of 2013.

**[13]** On 28 February 2014, the respondent sued Mr Sivananthan and MTUC for negligence in Shah Alam Sessions Court (Civil Suit No: A52-NCvC-69-02-2014). On 20 May 2015, after a full trial, the Sessions Court decided that Mr Sivananthan and MTUC were liable for negligence.

**[14]** On 13 June 2016, the respondent lodged a complaint against the appellant to the DB (No. Aduan DC/16/0520). The complaint was then set for hearing before the DC.

**[15]** The DC, in its report dated 23 August 2018, found that the appellant had committed the following misconducts:

(i) Section 94(3)(b) for breach of duty to a court including the failure to comply with an undertaking given to the Industrial Court on 17 March 2010.

A (ii) Section 94(3)(d) for breach of any rule of practice and etiquette, namely:

a) Rule 6(a) and Rule 24(a) for failing to appear and represent the client on the required day and failing to be ready for trial on the day fixed;

B b) Rule 16 for failing to uphold the interest of his client and the dignity of the profession;

c) Rule 17 for deceiving the court into believing that he was acting for the Complainant on 17 March 2010 and 6 April 2010;

C d) Rule 31 for failing to uphold at all times the dignity and high standing of the profession;

(iii) Section 94(3)(k) for breach of any provision of the LPA or of any rules made thereunder;

(iv) Section 94(3)(o) for being guilty of any conduct unbefitting of an D advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute and finally

(v) Section 94(3)(n) for grossly disregarding his client's interest.

**[16]** In the same report, the DC made the following finding and recommendations to the DB:

E C. Recommendation

45. It is unanimous recommendation of the DC that cause for disciplinary action exists and is of sufficient gravity to warrant the Respondent to be subjected to the imposition of a fine amounting to RM10,000.00 as per Section 103C(1)(c)(ll) of the Legal Profession Act, 1976.

F **[17]** In the said decision, the DB affirmed the finding and recommendation of the DC and imposed upon the appellant to pay a fine of RM10,000 only payable to the discipline fund within one month from the date of the order and in default thereof, s. 103(1) of LPA 1976 shall apply.

G **Law**

**[18]** It is trite that the courts should only interfere with the finding of facts and recommendations of the DC in the following limited circumstances, namely:

H (i) when the findings are manifestly perverse;

(ii) when the DC/DB had failed as right thinking members of the Bar to give due consideration to the facts of the case and the conduct of the solicitor complained against; and

I (iii) when there had been a breach of natural justice.

**[19]** Hashim Yeop A Sani J (as His Lordship then was) in the Federal Court decision of *Keith Sellar v. Lee Kwang & Another Appeal* [1980] 1 LNS 36; [1980] 2 MLJ 191 had this to say:

> We feel bound to reiterate here that the legal profession is an honourable profession whose members are expected to conduct themselves honourably. The appellants here were dealt with in a proceeding by virtue of a statute enacted to govern the conduct of members of their profession. Moreover; they were tried by their own peers. Members of the Disciplinary Committee were senior members of the profession who made firm findings of fact and they concluded that the appellants were guilty of misconduct in their practice as advocates and solicitors. The Chief Justice stated in *Au Kong Weng*'s case that statutes relating to the legal profession now entrust the supervision of advocates and solicitors' conduct to a committee of the profession, for it knows and appreciates better than anyone else the standards which responsible legal opinion demands of its own profession.

**[20]** In the Court of Appeal case of *Gana Muthusamy v. Tetuan LM Ong & Ors* [1998] 4 CLJ 878; [1998] 3 MLJ 341, Gopal Sri Ram JCA (as His Lordship then was) said:

> It is primarily for members of the Bar to decide what amounts to conduct unbecoming of an advocate and solicitor in particular circumstances, according to standards established by members of that honourable profession. Courts must necessarily exercise caution when entertaining an appeal in which the central question is whether particular conduct is unprofessional and cases meriting curial interference will be rare. Otherwise it will be the court and not the profession that will determine the yardstick of professional behaviour.

**[21]** See also *Bar Malaysia v. Mohd Fadli Shuib & Anor* [2014] 1 LNS 1934 (CA) and *Majlis Peguam v. Mohinder Kaur Balbir Singh Deol* [2011] 1 LNS 1910 (CA).

**[22]** In *Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Majlis Peguam (Intervener)* [2018] 2 CLJ 1; [2018] 2 MLJ 265, Prasad Sandosham Abraham FCJ (as His Lordship then was) in delivering the judgment of the Federal Court, held:

> [22] All these cases enunciate the point that the DC and/or like bodies, being a collegiate of peers, must be allowed to make findings of fact based on their experience in the profession under any given circumstances. The court must certainly not substitute themselves into the position of the DC in its review role. It is not for the court to say on the facts that the offending solicitor is guilty of professional misconduct or otherwise. So arguments on the merits should not be enunciated by the court and strong credence must be given to the findings of the DC which after all are subject to review by the DB which also consists of peers.
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> [23] We have considered the report of the DC and find there are no compelling grounds to interfere with its findings. The courts should only interfere with the finding offsets and recommendations of the DC in the following limited circumstances *ie*,:

A (i) when the findings are manifestly perverse;

(ii) the DC/DB had failed as right thinking members of the Bar to give due consideration to the facts of the case and the conduct of the solicitor complained against; and

(iii) there had been breach of natural justice.

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**Issues**

**[23]** The appellant raised several issues in the memorandum of appeal. During oral submission, the appellant focused on the following issues, namely:

C (i) whether the appellant was representing the respondent when the case was mentioned on 6 April 2010;

(ii) whether the appellant is obligated to inform the continued hearing dates to the respondent; and

D (iii) whether the DC or the DB had applied the wrong burden of proof in the disciplinary proceeding.

*First Issue: Whether The Appellant Was Representing The Respondent When The Case Was Mentioned On 6 April 2010*

E **[24]** Learned counsel for the appellant submitted that the learned HCJ had erred both in law and in fact when she found that the appellant had appeared before the Industrial Court on 6 April 2010 as the respondent's appointed counsel.

**[25]** In the learned HCJ's grounds of judgment, she expressed her F agreement with the findings of the DC that:

(i) the evidence of all witnesses and the Industrial Court's notes of proceeding during the disciplinary proceeding showed that the appellant did appear on behalf of the respondent without the respondent's knowledge;

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(ii) the evidence of Mr Rajan a/l Ayappan was not credible and inconsistent with the evidence of Mr. Sivananthan and the Industrial Court's notes of proceeding;

(iii) there was nothing in the Industrial Court's notes of proceeding to show H that the appellant appeared before the Industrial Court to mention on behalf of Mr Sivananthan; and

(iv) the learned Chairman himself confirmed that the appellant was the respondent's just appointed counsel on 6 April 2010 in the award as follows:

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... The case was mentioned on several dates and finally, on 6th April 2010, Mr. Sivananthan appeared in chambers together with Mr. A. Sivanesan the claimant's just appointed counsel, whereupon the court assigned dates for the continued hearing of the case *ie*, 13th and 14th September 2010.

**[26]** However, the parties in the present case never disputed that Forms A and B indicating the appointment of the appellant as the respondent's counsel was never filed in the Industrial Court.

**[27]** First and foremost, s. 27(1) of the IRA 1967 reads:

Section 21. Appearance and representation at proceedings before the Court.

(1) **In any proceedings before the Court a party may:**

(a) where the party is a trade union, be represented by an officer or employee of the trade union;

(b) where the party is an employer, appear himself personally or be represented by his duly authorised employee, or by an officer or employee of a trade union of employers of which he is a member;

(c) **where the party is a workman, appear himself personally or where he is a member of a trade union of workmen, be represented by an officer or employee of the trade union.**

(d) **where the party is** a trade union, or an employer, or **a workman, be represented with the permission of the President or the Chairman, bv an advocate,** or, notwithstanding anything to the contrary contained in any written law relating to the registration of trade unions, by any official of an organisation (not being a trade union) of employers or of workmen, as the case may be, registered in Malaysia.

(2) If any question arises before the Court as to whether the person representing a party under subsection (1) is:

(a) an officer or employee of the trade union which he represents;

(b) a duly authorised employee of the employer whom he represents; or

(c) an official of an organization mentioned in subsection (1)(d),

the question shall be determined by the President or the Chairman, whose decision thereon shall be final. (emphasis added)

**[28]** Rule 3 of the Industrial Court Rules 1967 reads:

A Rule 3. Legal Practitioners.

(1) *Any party seeking, under the provisions of section 27 of the Act the permission of the President to be represented at the proceedings before the Court by a legal practitioner shall make application in triplicate in Part I of Form A.*

(2) The Registrar shall serve a copy of Form A on the other party.

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(3) Such other party may signify in Part II of the Form objections, if any, to the application made in Part I. If the Form be not returned to the Registrar at the premises of the Court within five days of the date of service, no objections to the application made subsequent thereto will be entertained. (emphasis added)

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**[29]** Rule 4 of the Industrial Court Rules 1967 states that:

Rule 4. Warrant of Authority.

(1) *Any party who intends to be represented at the proceedings before the Court by a representative under the provisions of section 27 of the Act shall sign a warrant of authority in favour of such representative in Form B.*

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(2) A party appearing before the Court by a representative shall be bound by the acts of that representative. (emphasis added)

**[30]** It has always been the position of the Industrial Court that the proper filing of Forms A and B will determine whether the representative of either party has the *locus standi* to appear before the Industrial Court as that party's representative (see *Sanders Hydroseeding Sdn Bhd v. K. Radhakrishnan SK Nair* [1996] 2 ILR 1612, *Aero Manufacturing Sdn Bhd, Selangor v. Kesatuan Kebangsaan Pekerja-Pekerja Syarikat-Syarikat Pembuat Keluaran Getah* [1997] 2 ILR 416, *Bawani Maruthapillai v. Avani Sepang Goldcoast Resort (Golden Palm Tree Resort & Spa Sdn Bhd)* [2019] 2 LNS 1739, *Ng Peng Soon v. Wing Thung Trading Sdn Bhd* [2018] 2 LNS 2125, and *Island & Peninsular Bhd v. Zaidah Tambar* [2005] 2 ILR 909).

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**[31]** We agree with this position and do not see any reason to depart from it.

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**[32]** Since Forms A and B were never filed in the Industrial Court, the appellant has no *locus standi* to appear as the respondent's representative in the first place. Even the respondent admitted that he never appointed the appellant to represent him.

H **[33]** According to the appellant:

(i) during the case management on 6 April 2010, the appellant and Mr. Sivananthan informed the learned Chairman in chambers that the appellant would not represent the respondent since the respondent did not execute Forms A and B;

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(ii) the learned Chairman said he would not be recording the appellant's statement since he was not the counsel on record;

(iii) the learned Chairman informed the appellant to leave the court chambers, and the appellant complied, leaving the learned Chairman and Mr. Rajan in the chambers;

(iv) the continued hearing dates were given in the absence of the appellant.

**[34]** We find that the appellant's version was confirmed by Mr Rajan, who appeared on behalf of Messrs P S Sohanpal & Co, a legal firm representing the respondent's former employer on the day in question.

**[35]** We are of the view that the DC's grounds for not accepting Mr Rajan's testimony simply because he could not remember whether Mr Sivananthan appeared with the appellant and the name of the learned Chairman for an event which occurred some six years before to be wholly misconceived. We found that Mr Rajan was able to depict and corroborate the appellant's version of the material part of the incident. There was nothing to suggest that he had given false evidence before the DC or that his testimony was not credible.

**[36]** At this juncture, it is also imperative to note that Mr Sivananthan from MTUC, who was initially representing the respondent, also appeared with the appellant on the last mention date. Both Mr Sivananthan and MTUC were already found liable for negligence against the respondent.

**[37]** For the reasons above, we agree with learned counsel for the appellant that the DC and DB failed to give proper weight to the relevant evidence. This error rendered the DCs recommendation and the DB's decision highly perverse, warranting appellate intervention.

*Second Issue: Whether The Appellant Is Responsible To Inform The Continued Hearing Dates To The Respondent*

**[38]** Learned counsel for the appellant submitted that the learned HCJ erred both in fact and in law when she found that the appellant was responsible to inform the continued hearing dates to the respondent.

**[39]** The learned HCJ, in her grounds of judgment, found that:

(i) the appellant informed the Industrial Court that he represented the respondent without the respondent's knowledge;

(ii) the appellant failed to fulfil his solicitor's undertaking to file Forms A and B;

(iii) the appellant failed to inform the respondent of the continued hearing dates and failed to appear to the Industrial Court on those dates resulting in the respondent's case being struck off;

(iv) it is the appellant's duty to ensure that Forms A and B are filed in court as he had given his undertaking.

**[40]** The learned HCJ also agreed with the finding of the DC in its report that:

> 40. Therefore, we find overwhelming evidence to show that the Respondent had indeed appeared before the Industrial Court on 06 April 2010, wherein Continued Hearing dates were fixed on 13 and 14 September 2010 in his presence, and he had failed to inform the Complainant of the Continued Hearing date.
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> 41. The next to consider is whether or not the Respondent was under a duty to inform the Complainant of the Continued Hearing date. We answer this in the affirmative. It must be remembered that the very first date that the Respondent appeared on behalf of the Complainant on 17 March 2010, he had specifically given an undertaking to the Industrial Court for Forms A and B to be filed. A solicitor who gives his undertakings to any Court is bound by it. There can be no two ways about this.
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> 42. We also consider it irrelevant whether or not the Complainant ultimately did not sign Forms A and B. Once the Respondent who has at all times handed himself out as Solicitor for the Complainant to the Court, then he is under a duty to act as his Solicitor and discharge his obligations to the Complainant which includes informing the Complainant of the Continued Hearing date. It is then up to the Complainant to decide whether or not to engage the Respondent formally or to engage another Solicitor or representative to replace the Respondent. It certainly does not excuse the Respondent from totally not informing the Complainant of the Continued Hearing date.
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> 43. Furthermore, we also consider that his failure to attend the Continued Hearing date to be a breach of his professional duties to his client. He cannot use the excuse that the client did not execute the Forms A and B and thus he is not representing the client when in the first place it was he who appeared for the client in court without having the Forms A and B executed and then goes on to give the court his Solicitors undertaking that Form A and B will be filed by him.

**[41]** For reasons already set out above, we agree with learned counsel for the appellant that there was no evidence to show that the respondent appointed the appellant to represent him in the Industrial Court, and therefore the appellant has no obligation to inform the trial dates to the respondent.

*Third Issue: Whether The DC Or The DB Had Applied The Wrong Burden Of Proof In The Disciplinary Proceeding*

**[42]** Learned counsel for the appellant submitted that the learned HCJ failed to apply the correct standard of proof, *ie*, beyond reasonable doubt, in her findings below.

**[43]** It is trite that the standard of proof to establish misconduct is beyond reasonable doubt. See *Sithradevi Nagalingam v. Masdar Darman & Anor; Majlis Peguam Malaysia (Intervener)* [2021] 3 CLJ 677 (FC), *Dinesh Kanavaji Kanawagi* (*supra*), and *Majlis Peguam v. Cecil Wilbert Mohanaraj Abraham* [2019] 5 CLJ 139 (FC).

**[44]** While we agree that the standard of proof to establish misconduct is beyond reasonable doubt, the disciplinary proceeding is not subject to the rigid and strict adversarial procedures in criminal trials. The disciplinary proceeding may be conducted in any method or manner deemed appropriate as long as it is not in breach of any specific provisions of the relevant statutes or regulations and does not result in a denial of natural justice to the member concerned.

**[45]** In the exact words of Ramly Ali FCJ (as His Lordship then was) in the Federal Court case of *Majlis Peguam Malaysia v. Rajehgopal Velu & Anor* [2017] 2 CLJ 493; [2017] 1 MLJ 596:

> [31] At the outset, it must be stressed that *disciplinary proceedings against a solicitor under the LPA are not proceedings in a criminal court of law.* The proceedings although quasi-judicial in nature *need not emulate the strict adversarial procedure practised in a criminal court* (see *Jerald Allen Gomez v. Shencourt Sdn Bhd (Majlis Peguam, Intervenor)* [2006] 1 CLJ 88; [2006] 2 MLJ 343). On this point we agree with Abdul Hamid Embong J (as he then was), in *Jerald Allen Gormez* when His Lordship commented: 'To say that, in the absence of such procedures, the disciplinary committee should adhere strictly to the procedures in the proceedings of a criminal court, would be implying some requirements not intended by statute'.
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> ...
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> [33] It is a trite principle that a disciplinary committee of a professional body is entitled to conduct its disciplinary hearing in respect of a member of the body *in whatever way it deems appropriate provided that the method or manner it adopts is not in breach of any specific provisions of the relevant statutes or regulations and does not result in a denial of natural justice to the member concerned.*
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> [34] In *Lim Ko & Anor v. Board of Architects* [1965] 1 LNS 96; [1966] 2 MLJ 80, the Federal Court held, *inter alia*, that the proceedings of disciplinary tribunals or committees conducting an inquiry are by no means bound by the strict rules which apply to criminal trials. A legalistic approach is not appropriate in those proceedings. The same principle was adopted by the Federal Court in *Tan Hee Lock v. Commissioner for Federal Capital & Ors* [1973] 1 LNS 152; [1973] 1 MLJ 238; *Tanjong Jaga Sdn Bhd v. Minister of Labour and Manpower & Anor* [1987] CLJ Rep 368; [1987] 2 CLJ 119; [1987] 1 MLJ 124; and by the Court of Appeal in *Haji Ali bin Haji Othman v. Telekom Malaysia Bhd* [2003] 3 CLJ 310; [2003] 3 MLJ 29.
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> (emphasis added)

**[46]** Therefore, we disagree with the appellant on this issue.

## Conclusion

**[47]** We agree with learned counsel for the appellant on the two issues raised, except on the issue of the burden of proof. On that score, the two issues that we agreed upon, we allowed this appeal of the appellant and set aside the order of the High Court dated 22 February 2021. If the fine imposed has been paid, we ordered the fine to be returned to the appellant.

**[48]** On the cost of this appeal, we will give costs in the sum of RM5,000 to the appellant to be paid by the second respondent/intervener. We made no order as to costs against the first respondent.